

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Boards of Trustees for the :
Ohio Laborers' Fringe Benefit :
Programs, :

Plaintiff, :

v. : Case No. 2:07-cv-0242

Douglas Wilcox, individually : JUDGE WATSON
and d/b/a Wilcox Masonry, :

Defendant.

REPORT AND RECOMMENDATION

The Court held a show cause hearing on September 20, 2007 to determine if defendant should be held in contempt for his failure to produce records as ordered by this Court on June 5, 2007. Defendant was properly served with notice of the hearing but did not appear.

At the hearing, counsel for plaintiffs represented that records had been produced only for calendar year 2006. Such production does not comply with the Court's order, which directed defendant to produce records from 2004 through the date of production. Consequently, defendant is in contempt.

It is therefore RECOMMENDED that the motion for contempt (#11) be granted and that the defendant be held in contempt of court. It is further RECOMMENDED that a hearing on what sanctions should be imposed be held before the undersigned on October 19, 2007 at 10:00 a.m. Possible sanctions would include incarceration of the defendant and daily fines until the Court's order is complied with, plus an award of costs and attorneys' fees to the plaintiffs. Pending the hearing, if the required records are produced, it is RECOMMENDED that the finding of

contempt be vacated.

It is further ordered that a copy of this Report and Recommendation be served on the defendant personally by the United States Marshal.

PROCEDURE ON OBJECTIONS

If any party objects to this Report and Recommendation, that party may, within ten (10) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A judge of this Court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the magistrate judge with instructions. 28 U.S.C. §636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the district judge review the Report and Recommendation de novo, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. See Thomas v. Arn, 474 U.S. 140 (1985); United States v. Walters, 638 F.2d 947 (6th Cir. 1981).

/s/ Terence P. Kemp
United States Magistrate Judge